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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/384,646	08/27/1999	KEVIN BIRNIE	1-I-1-1	8093

7590                    08/13/2002

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[REDACTED] EXAMINER

PEREZ GUTIERREZ, RAFAEL

ART UNIT	PAPER NUMBER
2683	IS

DATE MAILED: 08/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No. <b>09/384,646</b>	Applicant(s) <b>Birnie et al.</b>
Examiner <b>Rafael Perez-Gutierrez</b>	Art Unit <b>2683</b>

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

THE REPLY FILED Jun 28, 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**THE PERIOD FOR REPLY [check only a) or b)]**

- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1.  A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2.  The proposed amendment(s) will not be entered because:
  - (a)  they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  they raise the issue of new matter (see NOTE below);
  - (c)  they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3.  Applicant's reply has overcome the following rejection(s):  
\_\_\_\_\_

4.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5.  The a)  affidavit, b)  exhibit, or c)  request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see attachment  
\_\_\_\_\_
6.  The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7.  For purposes of Appeal, the proposed amendment(s) a)  will not be entered or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-18

Claim(s) withdrawn from consideration: \_\_\_\_\_

8.  The proposed drawing correction filed on \_\_\_\_\_ is a)  approved or b)  disapproved by the Examiner.
9.  Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10.  Other: \_\_\_\_\_

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## ATTACHMENT

1. This Advisory Action is in response to Applicant's request for reconsideration filed on June 28, 2002.

### *Response to Arguments*

2. Applicant's arguments filed on June 28, 2002 have been fully considered but they are not persuasive.

In response to Applicant's argument, on page 3 of the remarks, that "Mizikovsky fails to perform any type of determinations of whether a received service station identifier matches a stored service station identifier when the mobile station is in active mode" because "[c]olumn 2, lines 12-20 of Mizikovsky disclose that the mobile station is unable to receive an identifier from the base station (service station) while it is in active mode".

The Examiner respectfully disagrees with Applicant's argument because, in column 2 lines 12-20, Mizikovsky is referring to the state of art of cellular mobile telephone systems **at the time of his invention**. In other words, the state of the art of cellular mobile telephone systems at the time of Mizikovsky's invention, and not Mizikovsky's invention as Applicant argues, did not allow a mobile station to receive an identifier from a base station while it is in active mode. Furthermore, Mizikovsky further refers to this issue as a drawback of the prior art that his invention overcomes (column 2 lines 12-20 and column 3 lines 31-52).

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To the contrary of Applicant's argument, Mizikovsky clearly suggests that the mobile station receives an identifier from the base station while the mobile station is in active mode when he discloses that a ROAM indication would have been provided in the active mode because  $SID_R$  does not matched  $SID_S$  (column 10 lines 4 and 5).

Additionally, Applicant further argues, on page 4 and 5 of the remarks, that "since Mizikovsky teaches that the base station to which an active call is being handed off determines whether a received mobile station identifier matches one of a collection of stored mobile station identifiers in order to determined whether or not the mobile station is in ROAM status" ... "Mizikovsky specifically *teaches away* from matching a service station identifier to one of a collection of acceptable service station identifiers to determine the HOME/ROAM status of the mobile station".

The Examiner respectfully disagrees with Applicant's argument because Mizikovsky clearly discloses that the base station **overrides** a ROAM indication provided in the active mode when  $SID_R$  does not matched  $SID_S$  if the base station determines that the roaming mobile station is to be assigned preferential status (i.e., HOME indication) which, in other words, clearly suggest that a ROAM indication based upon the comparison of  $SID_R$  with  $SID_S$  is made in the active mode before the overriding by the base station is performed.

Consequently, in view of the above reasons and having addressed each of Applicant's arguments, the final rejection is maintained by the Examiner.

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***Conclusion***

3. Any response to this Advisory Action should be **faxed to (703) 872-9314 or mailed to:**

Commissioner of Patents and Trademarks

Washington, D.C. 20231

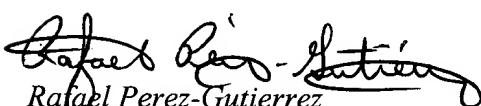
**Hand-delivered responses** should be brought to

Crystal Park II  
2021 Crystal Drive  
Arlington, VA 22202  
Sixth Floor (Receptionist)

4. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rafael Perez-Gutierrez whose telephone number is (703) 308-8996. The Examiner can normally be reached on Monday-Thursday from 6:30am to 5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, William G. Trost IV can be reached on (703) 308-5318. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700 or call customer service at (703) 306-0377.

  
Rafael Perez-Gutierrez  
R.P.G./rpg  
**RAFAEL PEREZ-GUTIERREZ**  
**PATENT EXAMINER**

Lee Nguyen   
Primary Examiner

August 9, 2002